

1 HONORABLE RONALD B. LEIGHTON  
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10 UNITED STATES DISTRICT COURT  
11 WESTERN DISTRICT OF WASHINGTON  
12 AT TACOMA

13 TIMOTHY A. PERSON,

14 Plaintiff,

No. 12-cv-5337 RBL

Order

v.

15 UNITED STATES OF AMERICA,

16 Defendant.

17  
18 I. INTRODUCTION

19 Before the Court is Plaintiff Timothy A. Person's application to proceed *in forma*  
20 *pauperis* and motion for appointment of counsel. For the reasons set forth below, the Court must  
21 deny both the application and the motion.

22 II. DISCUSSION

23 A. Application to Proceed *In Forma Pauperis*.

24 A district court may permit indigent litigants to proceed *in forma pauperis* upon  
25 completion of a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). The court has broad  
26 discretion in resolving the application, but "the privilege of proceeding *in forma pauperis* in civil  
27 actions for damages should be sparingly granted." *Weller v. Dickson*, 314 F.2d 598, 600 (9th  
28 Cir. 1963), *cert. denied* 375 U.S. 845 (1963). Moreover, a court should "deny leave to proceed

1       *in forma pauperis* at the outset if it appears from the face of the proposed complaint that the  
2 action is frivolous or without merit.” *Tripati v. First Nat'l Bank & Trust*, 821 F.2d 1368, 1369  
3 (9th Cir. 1987) (citations omitted); *see also* 28 U.S.C. § 1915(e)(2)(B)(i). An *in forma pauperis*  
4 complaint is frivolous if “it ha[s] no arguable substance in law or fact.” *Id.* (citing *Rizzo v.*  
5 *Dawson*, 778 F.2d 527, 529 (9th Cir. 1985); *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir.  
6 1984)).

7                  Here, the Complaint fails to properly identify a defendant; indeed, the Complaint lacks  
8 sufficient content to allow the Court to discern the nature of Plaintiff’s grievance. Plaintiff states  
9 that he was injured on the job by inhaling a mold. He then apparently filed a complaint with the  
10 Occupational Safety and Health Administration regarding discrimination under 29 U.S.C. §  
11 660(c) (“Discharge or discrimination against employee for exercise of rights under this chapter;  
12 prohibition; procedure for relief”). Confusingly, Plaintiff states that this is a personal injury  
13 matter and that OSHA’s investigation was “motivated to harass plaintiff instead of provide  
14 solution/justice.” Compl. at 2. Plaintiff summarizes his claims by stating that he “was injured  
15 on the job. My employer has failed to follow federal law, and its own written policy.” *Id.*  
16 Plaintiff seeks damages for medical expenses and attorney’s fees and costs. *Id.* at 3.

17                  Although Plaintiff lists “United States of America” as defendant, it is entirely unclear  
18 from the statement of claims who Plaintiff intends to sue—his employer or OSHA. Moreover,  
19 the statement contains only four sentences, which are confusing and fail to clarify a basis for  
20 relief. If Plaintiff intends to pursue *in forma pauperis* status, he must properly identify a  
21 defendant, claims, and the facts giving rise to those claims. Because he has not done so, the  
22 Court must conclude that the proposed complaint lacks merit on its face.

23                  **B. Motion for Appointment of Counsel.**

24                  No constitutional right to counsel exists for an indigent plaintiff in a civil case unless the  
25 plaintiff may lose his physical liberty if he loses the litigation. *See Lassiter v. Dept. of Social*  
26 *Servs.*, 452 U.S. 18, 25 (1981). However, pursuant to 28 U.S.C. § 1915(e)(1), the Court has the  
27 discretion to appoint counsel for indigent litigants who are proceeding *in forma pauperis*. *United*  
28 *States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995). The Court will

appoint counsel only under “exceptional circumstances.” *Id.*; *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). “A finding of exceptional circumstances requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims *pro se* in light of the complexity of the legal issues involved.” *Wilborn*, 789 F.2d at 1331 (internal quotations omitted). These factors must be viewed together before reaching a decision on whether to appoint counsel under § 1915(e)(1). *Id.*

Because the Court has denied leave to proceed *in forma pauperis*, it must similarly conclude that the proposed complaint lacks sufficient merit to justify appointment of counsel.

### III. ORDER

For the reasons stated above, the Court **DENIES** the application to proceed *in forma pauperis* and motion for appointment of counsel. [Dkts. #1, 2]. Plaintiff has **15 days** to pay the filing fees or the case may be dismissed.

Dated this 25<sup>th</sup> day of April 2012.

Ronald B. Leighton  
RONALD B. LEIGHTON  
UNITED STATES DISTRICT JUDGE